

SENATE BILL 2419
By Atchley

AN ACT to amend Tennessee Code Annotated, Section 56-26-109, relative to certain permissible policy provisions in accident and sickness insurance policies.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 56-26-109, is amended by deleting paragraph (6) in its entirety and by substituting instead the following:

(6) Overinsurance: After the loss-of-time benefit of this policy has been payable for ninety (90) days, the benefit will be adjusted, as provided below, if the total amount of unadjusted loss-of-time benefits provided in all valid loss-of-time coverage upon the insured should exceed (insert amount) percent of the insured's earned income; provided, however, that if the information contained in the application discloses that the total amount of loss-of-time benefits under this policy and under all other valid loss-of-time coverage expected to be effective upon the insured in accordance with the application for this policy exceeded (insert amount) percent of the insured's earned income at the time of such application, the higher percentage will be used in place of (insert amount) percent. The adjusted loss-of-time benefit under this policy for any month shall be only such proportion of the loss-of-time benefit otherwise payable under this policy as (i) the product of the insured's earned income and (insert amount) percent (or, if higher, the alternative percentage described at the end of the first sentence of this provision) bears to (ii) the total amount of loss-of-time benefits payable for such month

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under this policy and all other valid loss-of-time coverage on the insured (without giving effect to the overinsurance provision in this or any other coverage) less in both (i) and (ii) any amount of loss-of-time benefits payable under other valid loss-of-time coverage which does not contain an overinsurance provision. In making the computation, all benefits and earnings shall be converted to a consistent [insert "weekly" if the loss-of-time benefit of this policy is payable weekly, "monthly" if the benefit is payable monthly, etc.] basis. If the numerator of the foregoing ratio is zero or is negative, no such benefit shall be payable under this policy. In no event shall this provision operate to reduce the total combined amount of loss-of-time benefits for such month payable under this policy, and all other valid loss-of-time coverage below the lesser of three hundred dollars (\$300) and the total combined amount of loss-of-time benefits determined without giving effect to any overinsurance provision, or operate to increase the amount of benefits payable under this policy above the amount which would have been paid in the absence of this provision, or take into account or operate to reduce any benefit other than the loss-of-time benefit.

For purposes of this provision:

(a) "Earned income", except where otherwise specified, means the greater of the monthly earnings of the insured at the time disability commences and his average monthly earnings for a period of two (2) years immediately preceding the commencement of disability, and shall not include any investment income or any other income not derived from the insured's vocational activities.

(b) "Overinsurance provision" shall include this provision and any other provision with respect to any loss-of-time coverage which may have the effect of reducing an insurer's liability if the total amount of loss-of-time benefits under all coverage exceeds a stated relationship to the insured's earnings.

The above policy provision (6) may be inserted only in a policy which provides a loss-of-time benefit which may be payable for at least fifty-two (52) weeks, which is issued on the basis of selective underwriting of each individual application, and for which the application includes a question designed to elicit information necessary either to determine the ratio of the total loss-of-time benefits of the insured to the insured's earned income or to determine that such ratio does not exceed the percentage of earnings, not less than sixty percent (60%) selected by the insurer and inserted in lieu of the blank factor above. The insurer may require, as part of the proof of claim, the information necessary to administer this provision. If the application indicates that other loss-of-time coverage is to be discontinued, the amount of such other coverage shall be excluded in computing the alternative percentage in the first sentence of the overinsurance provision. The policy shall include a definition of "valid loss-of-time coverage" approved as to form by the commissioner, which definition may include coverage provided by governmental agencies and by organizations subject to regulation by insurance law and by insurance authorities of this or any other state of the United States or of any other country or subdivision thereof, coverage provided for such insured pursuant to any disability benefits statute or any workmen's compensation or employer's liability statute, benefits provided by labor-management trustee plans or union welfare plans or by salary continuance or pension programs, and any other coverage the inclusion of which may be approved by the commissioner.

If by application of any of the above policy provision (6) the insurer effects a material reduction of benefits otherwise payable under the policy, the insurer shall refund, for the period two (2) years proceeding the disability for which a claim is made, any premium unearned on the policy by reason of such reduction of coverage, subject to the insurer's right to provide in the policy that no such reduction of benefits or refund will

be made unless the unearned premium to be so refunded amounts to five dollars (\$5.00) or such larger sum as the insurer may so specify.

SECTION 2. This act shall take effect July 1, 1998, the public welfare requiring it.